

TOM DAVIS, VIRGINIA,
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
DAN BURTON, INDIANA
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
GIL GUTKNECHT, MINNESOTA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
CANDICE MILLER, MICHIGAN
MICHAEL R. TURNER, OHIO
DARRELL ISSA, CALIFORNIA
JON C. PORTER, NEVADA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. MCHENRY, NORTH CAROLINA
CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA
JEAN SCHMIDT, OHIO
VACANCY

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

<http://reform.house.gov>

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER,
MARYLAND
BRIAN HIGGINS, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT


SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

Christopher Shays, Connecticut
Chairman

Room B-372 Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2392

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats,
and International Relations

From: Christopher Shays 
Chairman

Date: June 22, 2006

Subject: Briefing memorandum for June 27, 2006 Subcommittee hearing.

Attached find the briefing memorandum required by Committee rules for the hearing on Tuesday, June 27, 2006 entitled, *Sexual Assault and Violence Against Women in the Military and at the Academies*. The hearing will convene at 2:00 pm in 2154 Rayburn House Office Building.

TOM DAVIS, VIRGINIA,
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
DAN BURTON, INDIANA
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
GIL GUTKNECHT, MINNESOTA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
TODD RUSSELL PLATT, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
CANDICE MILLER, MICHIGAN
MICHAEL R. TURNER, OHIO
DARRELL ISSA, CALIFORNIA
JON C. PORTER, NEVADA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA
JEAN SCHMIDT, OHIO
VACANCY

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

<http://reform.house.gov>

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
Wm. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER,
MARYLAND
BRIAN HIGGINS, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

Christopher Shays, Connecticut
Chairman

Room B-372 Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2382

June 22, 2006

MEMORANDUM

To: Members of the Subcommittee on National Security,
Emerging Threats, and International Relations

From: Mrs. Kristine K. Fiorentino, Professional Staff Member

Subject: Briefing Memorandum for the hearing, *Sexual Assault and
Violence Against Women in the Military and at the Academies*
scheduled for Tuesday, June 27, 2006, at 2:00 p.m. in room
2154 Rayburn House Office Building.

PURPOSE OF THE HEARING

The purpose of the hearing is to examine efforts by the Department of Defense to address sexual assault and violence against women in the military and at the academies.

HEARING ISSUES

1. To what extent has the Department of Defense addressed the recommendations made by the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies?
2. What further challenges and steps remain to mitigate sexual assault and violence against women in the military?

BACKGROUND

Sexual Harassment is defined in federal law as:

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of a individual's employment (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. **(Web Resource 1)**

Sexual Assault is legally defined differently in each state. In the military community sexual assault includes everything from violent sexual acts such as rape, forcible sodomy and assault with intent to commit rape or sodomy, to indecent assault. **(Web Resource 1)**

Since 1990, Congress has examined the issue of sexual harassment and assault at the Military Academies. The General Accounting Office (GAO) released reports in 1994 and 1995 on the issue of sexual harassment at the Academies. GAO found in 1994 that while the Academies generally complied with the minimum Department of Defense (DOD) requirements for sexual harassment programs they did not provide an environment free from sexual harassment. GAO's report in 1995 showed an increase in the percentage of female cadets and midshipmen who acknowledged experiencing at least one of ten forms of sexual harassment on a recurring basis. **(Web Resource 1)**

From January 1, 1993 to December 31, 2002 there were 142 allegations of sexual assault at the U.S. Air Force Academy. **(Web Resource 1)** In January 2003, several victims came forward alleging sexual assault at the United States Air Force Academy. Investigations followed and reports were issued looking into this matter. Congress established a panel chaired by Congresswoman Tillie K. Fowler, to examine the issue at the Air Force Academy. The panel found, "The failure of the Academy and Air Force Headquarters leadership to respond aggressively and in a timely and committed way to eliminate causes of serious problems was a failure of

leadership. Those responsible should be held accountable.” (**Web Resource 2**) The Air Force accepted the findings of the Fowler Commission and the recommendations have been implemented or will be implemented. (**Web Resource 1**)

The Defense Task Force on Sexual Harassment and Violence at the Military Service Academies

Concerns about potential problems at the US Military Academy and the US Naval Academy led to Congress creating the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies. The Task Force was established on September 23, 2004, pursuant to Section 526 of Public Law 108-136, the National Defense Authorization Act for Fiscal Year 2004. The law required the Task Force to “examine matters relating to sexual harassment and violence at the United States Military Academy and United States Naval Academy.” (**Attachment 1**) The Task Force was made up of six members from the four branches of the Armed Forces and six members from the civilian community. In June 2005, the Task Force issued a report of their findings and recommendations. (**Web Resource 1**)

The report included 44 findings and recommendations that addressed the following seven categories: Service Academy Culture, Confidentiality, Victim’s Rights and Support, Offender Accountability, Training and Education, Prevention and Coordination Between Military And Civilian Communities.

In terms of the Service Academy Culture, the Task Force found,

Historically, sexual harassment and sexual assault have been inadequately addressed at both Academies. Harassment is the more prevalent and corrosive problem, creating an environment in which sexual assault is more likely to occur. Although progress has been made, hostile attitudes and inappropriate actions toward women, and the toleration of these by some cadets and midshipmen, continue to hinder the establishment of a safe and professional environment in which to prepare future military officers. (**Web Resource 1**)

The Task Force recommended midshipmen and cadets hold each other accountable by intervening, confronting and correcting one another.

The report also found since female service members are in the minority, excluded from combat specialties and held to different physical fitness standards, they may not be valued as highly as men. The Task Force recommended an increase in the number and visibility of Non-Commissioned Officers (NCOs) in key positions to serve as role models and to increase the percentage of women at the Academies. The Task Force also concluded, “the leadership, staff, faculty, cadets and midshipmen must model behaviors that reflect and positively convey the value of women in the military.” **(Web Resource 1)**

The Task Force found victims lacked adequate confidential resources and chaplains were the only source of complete confidentiality under the law. The Task Force also found sexual assault victims may not seek medical care from military medical facilities since military regulations require the reporting and triggering of a criminal investigation in the event of sexual assault. The Task Force recommended Congress create a statutory privilege protecting communication made by sexual assault victims to health care providers and victim advocates. The report noted Commanders have, “principal responsibility for ensuring appropriate care of victims, as well as for investigating and holding accountable those who have committed the related misconduct.” **(Web Resource 1)**

Under the category of Victim’s Rights and Support, the Task Force recommended all Academy personnel including cadets and midshipmen receive training on the various reporting resources, the level of confidentiality afforded to each and treatment available to victims. The Task Force further recommended victims are informed of and afforded their rights.

The Task Force also found Academy records from the past ten years showed, “an extended period where alleged offenders were not consistently or effectively held accountable through the criminal justice system.” **(Web Resource 1)** The Task Force noted some improved efforts in the past two years, however the Task Force recommended, “Congress revise the current sexual misconduct statutes to more clearly and comprehensively address the full range of sexual misconduct.” **(Web Resource 1)** The report also recommended the “amendment of Article 32 of the UCMJ (Uniform Code of Military Justice) to permit commanders to close the proceedings to protect the privacy of victims and alleged offenders.” **(Web Resource 1)**

In terms of Training and Education, the Task Force found current Academy programs dealing with sexual harassment and assault were poorly designed, inconveniently scheduled and ineffective and therefore faculty, staff, and volunteers had not received the proper training on these issues. The Task Force recommended “classes addressing sexual harassment and assault be graded, and conducted during academic hours.” (**Web Resource 1**) It was also recommended that an effective training program for faculty and staff be implemented.

In addressing the issue of Prevention, the Task Force recommended, “the Academies develop an institutional sexual harassment and assault prevention plan that is evaluated and updated annually.” (**Web Resource 1**) The Task Force also noted the need for Senior Noncommissioned Officer and Senior Enlisted Leader duties to be clearly defined and provide for more direct interaction with cadets and midshipmen during the evening and weekend.

The Task Force found the Academies had minimal formal relationships with local law enforcement and victim support agencies and recommended the Academies “follow the DOD policy regarding establishing collaborative relationships with civilian authorities for sexual assault victim support.” (**Web Resource 1**)

The work of the Task Force was completed in September 2005. After the work of the Task Force was finished, the Ronald W. Reagan National Defense Authorization for FY 2005 (Public Law 108-375, Section 576), required the Defense Task Force to “conduct an examination of matters relating to sexual assault in cases in which members of the Armed Forces are either victims or commit acts of sexual assault.” (**Attachment 2**) The law also required the Defense Task Force to submit a report “Not later than one year after the initiation of its examination.” (**Attachment 2**) This work has not been completed since the Secretary of Defense has not yet appointed members of the Defense Task Force to begin the work.

The DOD Inspector General was tasked with evaluating the issue of sexual assault at the Air Force Academy, and in 2004 the IG conducted surveys of all three service Academies entitled the, “Service Academy Sexual Assault and Leadership Survey.” Female cadets and midshipmen reported 64 incidents of rape, and 30 incidents of forcible sodomy. The

survey also found 50% of the women at the Academies reported verbal sexual harassment. The Defense Manpower Data Center will conduct these surveys annually through 2008. (**Web Resource 1**)

Sexual Assault in the Military

Reports of sexual assault during the beginning stages of Operation Iraqi Freedom prompted the Secretary of Defense Donald Rumsfeld in February 2004 to appoint the “Task Force on Care for Victims of Sexual Assault.” The Task Force looked into how victims of sexual assault were handled throughout the Department of Defense. One of the recommendations from the Task Force was for the Secretary to establish a single point of accountability for policy relating to sexual assault.

In response to this recommendation, on October 2004 Secretary Rumsfeld established the “Joint Task Force on Sexual Assault Prevention and Response” (JTF-SAPR) to serve as the single point of accountability on sexual assault matters within DOD. The JTF-SAPR was also tasked with implementing the recommendations from the Task Force on Care For Victims of Sexual Assault and Public Law 108-375, Ronald W. Reagan National Defense Authorization. (**Web Resource 3**) On October 6, 2005 DOD issued Directive number 6495.01 establishing a comprehensive DOD policy on prevention and response to sexual assaults. (**Attachment 3**)

DISCUSSION OF HEARING ISSUES

1. To what extent has the Department of Defense addressed the recommendations made by the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies?

The DOD has taken some positive steps toward addressing sexual assault and violence in the military and the Academies by establishing the Joint Task Force on Sexual Assault Prevention and Response (JTF-SAPR) to serve as the single point of accountability on sexual assault matters within DOD and by creating the Directive establishing DOD policy on prevention and response to sexual assault.

However there are concerns the Directive does not go far enough in protecting the privacy of victims. The Directive allows service members

who have been sexually assaulted to have two reporting options. The first option is unrestricted reporting which allows victims to get medical treatment and counseling along with an official investigation of the allegations.

The second option is restricted reporting which enables victims to confidentially disclose the details of the assault to Sexual Assault Response Coordinators (SARCs), Victim Advocates (VAs), and healthcare providers (HCPs), and at the same time receive medical treatment and counseling without triggering the official investigative process. Installation commanders will be notified of the assault but will only receive non-personal identifying information about the victim. **(Attachment 3, p. 11)** However, there are various exceptions to confidentiality and restricted reporting and limitations on its use. For example, if a commander gets information about a sexual assault from a source independent of the restricted reporting avenues, “that commander shall report the matter to law enforcement and an official investigation may be initiated based on that independently acquired information.” **(Attachment 3, p. 14)** Also, any disclosure of the sexual assault to people whose communication is not protected under the restricted reporting policy, “may result in the initiation of the official investigative process regarding the allegations that the victim disclosed.” **(Attachment 3, p. 14)**

DOD believes the restricted reporting requirement and increased training programs have encouraged victims to come forward. A recent report by DOD found in 2005 there were 2,372 reports of sexual assault involving a service member as a victim or perpetrator. This number was up from 1,700 reports in 2004. However, others believe more time is needed to evaluate whether policies are helping victims come forward. **(Web Resource 4)**

2. What further challenges and steps remain to mitigate sexual assault and violence against women in the military?

The Defense Task Force on Sexual Assault at the Military Academies completed their work in September 2005. However, the Secretary of Defense has not yet appointed members to serve on the Task Force looking into sexual assault in the Armed Forces and until members are appointed the work will not begin. Some question why the Secretary has delayed appointing the Task Force and they are concerned the Secretary may not be committed to doing so.

Many would agree that a long term, sustained effort by DOD is needed. This is noted in the Task Force Report's conclusion:

The record of the two Academies, much like the record of the Department of Defense, is one of sporadic and incomplete attempts to eliminate sexual harassment and assault. Both the Naval and the Military Academies have made progress in addressing these issues over the last several years. The Academies need resources and support from the Services, DOD, and Congress to ensure success. **(Web Resource 1)**

The Military culture is one that values physical strength and the inherent biological differences between men and women along with differing perspectives on women's role in the military will continue to pose challenges for the Department of Defense when dealing with the issues of sexual harassment and assault. However, the leadership of the military and Academies can continue to make progress in ensuring service members are fully aware sexual harassment and assault will not be tolerated and victims who step forward will receive the support and medical care they need.

WITNESS TESTIMONY

Ms. Delilah Rumberg, Executive Director of the Pennsylvania Coalition Against Rape will testify about the findings and recommendations of the June 2005 Defense Task Force Report on Sexual Harassment & Violence at the Military Service Academies.

Ms. Christine Hansen, Executive Director of the Miles Foundation will testify about the status of sexual harassment and violence in the military and at the academies.

Ms. Beth Davis, Former U.S. Air Force Cadet, will testify about the challenges she faced in reporting sexual assault at the US Air Force Academy and recommendations she has to improve the process for victims.

Dr. Kaye Whitley, Acting Director, Sexual Assault Prevention and Response Office, Department of Defense, will testify about how DOD has addressed the recommendations in the Defense Task Force Report.

Vice Admiral Rodney P. Rempt, Superintendent of the U.S. Naval Academy will testify about how the academy has addressed the Defense Task Force recommendations.

Brigadier General Robert L. Caslen, Jr., Commandant of the U.S. Military Academy will testify about how the academy has addressed the Defense Task Force recommendations.

Brigadier General Susan Y. Desjardins, Commandant of the U.S. Air Force Academy will testify about how the academy has addressed the Defense Task Force recommendations.

Rear Admiral Paul J. Higgins, Director of Health & Safety of the U.S. Coast Guard will testify about how the academy has addressed the Defense Task Force recommendations.

ATTACHMENTS

1. Copy of Section 526 of The National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136)
2. Copy of Section 576 of the Ronald W. Reagan National Defense Authorization for Fiscal Year 2005 (Public Law 108-375)
3. Department of Defense Directive Number 6495.01 entitled, "Sexual Assault Prevention and Response (SAPR) Program," (October 6, 2005)

WEB RESOURCES

1. Report of the Defense Task Force on Sexual Harassment & Violence at the Military Service Academies (June 2005)
http://www.sapr.mil/contents/references/High_GPO_RRC_tx.pdf
2. Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy (September 2003)
http://www.sapr.mil/contents/references/p18_18.pdf
3. United States Department of Defense Sexual Assault Prevention and Response Website
<http://www.sapr.mil/HomePage.aspx?Topic=About%20SAPR>
4. GovExec.com, Daniel Pulliam, "Pentagon Seeks to Explain Rise in Sexual Assault Reports: (March 17, 2006)
http://www.govexec.com/story_page.cfm?articleid=33630&dcn=e_ndw

Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations

"Sexual Assault and Violence Against Women in the Military and at the Academies"
(June 27, 2006)

Witness List

PANEL ONE

Ms. Delilah Rumberg
Executive Director
Pennsylvania Coalition Against Rape
National Sexual Violence Resource Center

Ms. Christine Hansen
Executive Director
The Miles Foundation, Inc.

Ms. Beth Davis
Former United States Air Force Academy Cadet

PANEL TWO

Dr. Kaye Whitley
Acting Director
Sexual Assault Prevention and Response Office
Department of Defense

Vice Admiral Rodney P. Rempt
Superintendent of the United States Naval Academy

Brigadier General Robert L. Caslen, Jr.
Commandant of the United States Military Academy

Brigadier General Susan Y. Desjardins
Commandant of the United States Air Force Academy

Rear Admiral Paul J. Higgins
Director of Health & Safety, United States Coast Guard

ATTACHMENT 1

10 USC 4331
note.

SEC. 526. DEFENSE TASK FORCE ON SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES.

(a) **ESTABLISHMENT.**—The Secretary of Defense shall establish a Department of Defense task force to examine matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy.

Deadline.
Reports.

(b) **RECOMMENDATIONS.**—Not later than 12 months after the date on which all members of the task force have been appointed, the task force shall submit to the Secretary of Defense a report recommending ways by which the Department of Defense and the Department of the Army and the Department of the Navy may more effectively address matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy, respectively. The report shall include an assessment of, and recommendations (including any recommended changes in law) for measures to improve, with respect to sexual harassment and violence at those academies, the following:

- (1) Victims' safety programs.
- (2) Offender accountability.
- (3) Effective prevention of sexual harassment and violence.
- (4) Collaboration among military organizations with responsibility or jurisdiction with respect to sexual harassment and violence.
- (5) Coordination between military and civilian communities, including local support organizations, with respect to sexual harassment and violence.
- (6) Coordination between military and civilian communities, including civilian law enforcement relating to acts of sexual harassment and violence.
- (7) Data collection and case management and tracking.
- (8) Curricula and training, including standard training programs for cadets at the United States Military Academy and midshipmen at the United States Naval Academy and for permanent personnel assigned to those academies.
- (9) Responses to sexual harassment and violence at those academies, including standard guidelines.
- (10) Other issues identified by the task force relating to sexual harassment and violence at those academies.

(c) **METHODOLOGY.**—The task force shall consider the findings and recommendations of previous reviews and investigations of sexual harassment and violence conducted for those academies as one of the bases for its assessment.

(d) **REPORT.**—(1) The task force shall submit to the Secretary of Defense and the Secretaries of the Army and the Navy a report on the activities of the task force and on the activities of the United States Military Academy and the United States Naval Academy to respond to sexual harassment and violence at those academies.

(2) The report shall include the following:

(A) Any barriers to implementation of improvements as a result of those efforts.

(B) Other areas of concern not previously addressed in prior reports.

(C) The findings and conclusions of the task force.

(D) Any recommendations for changes to policy and law as the task force considers appropriate, including whether cases of sexual assault at those academies should be included in

the Department of Defense database known as the Defense Incident-Based Reporting System.

(3) Within 90 days after receipt of the report under paragraph (1) the Secretary of Defense shall submit the report, together with the Secretary's evaluation of the report, to the Committees on Armed Services of the Senate and House of Representatives.

(e) REPORT ON AIR FORCE ACADEMY.—Simultaneously with the submission of the report under subsection (d)(3), the Secretary of Defense, in coordination with the Secretary of the Air Force, shall submit to the committees specified in that subsection the Secretary's assessment of the effectiveness of corrective actions being taken at the United States Air Force Academy as a result of various investigations conducted at that Academy into matters involving sexual assault and harassment.

(f) COMPOSITION.—(1) The task force shall consist of not more than 14 members, to be appointed by the Secretary of Defense. Members shall be appointed from each of the Army, Navy, Air Force, and Marine Corps, and shall include an equal number of personnel of the Department of Defense (military and civilian) and persons from outside the Department of Defense. Members appointed from outside the Department of Defense may be appointed from other Federal departments and agencies, from State and local agencies, or from the private sector.

(2) The Secretary shall ensure that the membership of the task force appointed from the Department of Defense includes at least one judge advocate.

(3) In appointing members to the task force, the Secretary may—

(A) consult with the Attorney General regarding a representative from the Office of Violence Against Women of the Department of Justice; and

(B) consult with the Secretary of Health and Human Services regarding a representative from the Women's Health office of the Department of Health and Human Services.

(4) Each member of the task force appointed from outside the Department of Defense shall be an individual who has demonstrated expertise in the area of sexual harassment and violence or shall be appointed from one of the following:

(A) A representative from the Office of Civil Rights of the Department of Education.

(B) A representative from the Centers for Disease Control and Prevention of the Department of Health and Human Services.

(C) A sexual assault policy and advocacy organization.

(D) A civilian law enforcement agency.

(E) A judicial policy organization.

(F) A national crime victim policy organization.

(5) The members of the task force shall be appointed not later than 120 days after the date of the enactment of this Act. Deadline.

(g) CO-CHAIRS OF THE TASK FORCE.—There shall be two co-chairs of the task force. One of the co-chairs shall be designated by the Secretary of the Defense at the time of appointment from among the Department of Defense personnel on the task force. The other co-chair shall be selected from among the members appointed from outside the Department of Defense by those members.

(h) ADMINISTRATIVE SUPPORT.—(1) Each member of the task force who is a member of the Armed Forces or a civilian officer or employee of the United States shall serve without compensation (other than compensation to which entitled as a member of the Armed Forces or an officer or employee of the United States, as the case may be). Other members of the task force shall be appointed in accordance with, and subject to, section 3161 of title 5, United States Code.

(2) The Deputy Under Secretary of Defense for Personnel and Readiness, under the direction of the Under Secretary of Defense for Personnel and Readiness, shall provide oversight of the task force. The Washington Headquarters Services of the Department of Defense shall provide the task force with personnel, facilities, and other administrative support as necessary for the performance of the task force's duties.

(3) The Deputy Under Secretary shall coordinate with the Secretary of the Army to provide visits of the task force to the United States Military Academy and with the Secretary of the Navy to provide visits of the task force to the United States Naval Academy.

(i) TERMINATION.—The task force shall terminate 90 days after the date on which the report of the task force is submitted to the Committees on Armed Services of the Senate and House of Representatives pursuant to subsection (d)(3).

10 USC 4331
note.

SEC. 527. ACTIONS TO ADDRESS SEXUAL HARASSMENT AND VIOLENCE AT THE SERVICE ACADEMIES.

(a) POLICY ON SEXUAL HARASSMENT AND VIOLENCE.—(1) Under guidance prescribed by the Secretary of Defense—

(A) the Secretary of the Army shall direct the Superintendent of the United States Military Academy to prescribe a policy on sexual harassment and violence applicable to the personnel of the United States Military Academy;

(B) the Secretary of the Navy shall direct the Superintendent of the United States Naval Academy to prescribe a policy on sexual harassment and violence applicable to the personnel of the United States Naval Academy; and

(C) the Secretary of the Air Force shall direct the Superintendent of the United States Air Force Academy to prescribe a policy on sexual harassment and violence applicable to the personnel of the United States Air Force Academy.

(2) The policy on sexual harassment and violence prescribed for an academy under paragraph (1) shall specify the following:

(A) Programs to promote awareness of the incidence of rape, acquaintance rape, and other sexual offenses of a criminal nature that involve academy personnel.

(B) Procedures that a cadet or midshipman should follow in the case of an occurrence of sexual harassment or violence, including—

(i) a specification of the person or persons to whom the alleged offense should be reported;

(ii) a specification of any other person whom the victim should contact; and

(iii) procedures on the preservation of evidence potentially necessary for proof of criminal sexual assault.

(C) Procedures for disciplinary action in cases of alleged criminal sexual assault involving academy personnel.

ATTACHMENT 2

conclusions of the panel as a result of the study and review, together with any recommendations for legislative or administrative action that the panel considers appropriate. The Secretary of Defense shall transmit the report, together with any comments the Secretary wishes to provide, to the Committees on Armed Services of the Senate and House of Representatives not later than May 1, 2005.

(9) In this section, the term "Armed Forces" does not include the Coast Guard.

Subtitle K—Sexual Assault in the Armed Forces

10 USC 4331
note.

SEC. 576. EXAMINATION OF SEXUAL ASSAULT IN THE ARMED FORCES BY THE DEFENSE TASK FORCE ESTABLISHED TO EXAMINE SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES.

(a) **EXTENSION OF TASK FORCE.**—(1) The task force in the Department of Defense established by the Secretary of Defense pursuant to section 526 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1466) to examine matters relating to sexual harassment and violence at the United States Military Academy and United States Naval Academy shall continue in existence for a period of at least 18 months after the date as of which the task force would otherwise be terminated pursuant to subsection (i) of that section.

(2) Upon the completion of the functions of the task force referred to in paragraph (1) pursuant to section 526 of the National Defense Authorization Act for Fiscal Year 2004, the name of the task force shall be changed to the Defense Task Force on Sexual Assault in the Military Services, and the task force shall then carry out the functions specified in this section. The task force shall not begin to carry out the functions specified in this section until it has completed its functions under such section 526.

(3) Before the task force extended under this subsection begins to carry out the functions specified in this section, the Secretary of Defense may, consistent with the qualifications required by section 526(f) of Public Law 108-136, change the composition of the task force as the Secretary considers appropriate for the effective performance of such functions, except that—

(A) any change initiated by the Secretary in the membership of the task force under this paragraph may not take effect before the task force has completed its functions under section 526 of Public Law 108-136; and

(B) the total number of members of the task force may not exceed 14.

(b) **EXAMINATION OF MATTERS RELATING TO SEXUAL ASSAULT IN THE ARMED FORCES.**—The task force shall conduct an examination of matters relating to sexual assault in cases in which members of the Armed Forces are either victims or commit acts of sexual assault.

(c) **RECOMMENDATIONS.**—The Task Force shall include in its report under subsection (e) recommendations of ways by which civilian officials within the Department of Defense and leadership within the Armed Forces may more effectively address matters relating to sexual assault. That report shall include an assessment of, and recommendations (including any recommendations for

changes in law) for measures to improve, with respect to sexual assault, the following:

- (1) Victim care and advocacy programs.
- (2) Effective prevention.
- (3) Collaboration among military investigative organizations with responsibility or jurisdiction.
- (4) Coordination and resource sharing between military and civilian communities, including local support organizations.
- (5) Reporting procedures, data collection, tracking of cases, and use of data on sexual assault by senior military and civilian leaders.
- (6) Oversight of sexual assault programs, including development of measures of the effectiveness of those programs in responding to victim needs.
- (7) Military justice issues.
- (8) Progress in developing means to investigate and prosecute assailants who are foreign nationals.
- (9) Adequacy of resources supporting sexual assault prevention and victim advocacy programs, particularly for deployed units and personnel.
- (10) Training of military and civilian personnel responsible for implementation of sexual assault policies.
- (11) Programs and policies, including those related to confidentiality, designed to encourage victims to seek services and report offenses.
- (12) Other issues identified by the task force relating to sexual assault.

(d) **METHODOLOGY.**—In carrying out its examination under subsection (b) and in formulating its recommendations under subsection (c), the task force shall consider the findings and recommendations of previous reviews and investigations of sexual assault conducted by the Department of Defense and the Armed Forces.

(e) **REPORT.**—(1) Not later than one year after the initiation of its examination under subsection (b), the task force shall submit to the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force a report on the activities of the task force and on the activities of the Department of Defense and the Armed Forces to respond to sexual assault.

(2) The report shall include the following:

- (A) A description of any barrier to implementation of improvements as a result of previous efforts to address sexual assault.
- (B) Other areas of concern not previously addressed in prior reports.
- (C) The findings and conclusions of the task force.
- (D) Any recommendations for changes to policy and law that the task force considers appropriate.

(3) Within 90 days after receipt of the report under paragraph (1), the Secretary of Defense shall submit the report, together with the Secretary's evaluation of the report, to the Committees on Armed Services of the Senate and House of Representatives.

(f) **TERMINATION.**—The task force shall terminate 90 days after the date on which the report of the task force is submitted to the Committees on Armed Services of the Senate and House of Representatives pursuant to subsection (e)(3).

ATTACHMENT 3



Department of Defense

DIRECTIVE

NUMBER 6495.01

October 6, 2005

USD(P&R)

SUBJECT: Sexual Assault Prevention and Response (SAPR) Program

- References:
- (a) Section 113 of title 10, United States Code
 - (b) Under Secretary of Defense for Personnel and Readiness Memorandum, "Collateral Misconduct in Sexual Assault Cases (JTF-SAPR-001)," November 12, 2004
 - (c) Under Secretary of Defense for Personnel and Readiness Memorandum, "Increased Victim Support and A Better Accounting of Sexual Assault Cases (JTF-SAPR-002)," November 22, 2004
 - (d) Under Secretary of Defense for Personnel and Readiness Memorandum, "Data Call for CY04 Sexual Assaults (JTF-SAPR-003)," November 22, 2004
 - (e) through (w), see enclosure 1

1. PURPOSE

1.1. Pursuant to reference (a), this Directive establishes a comprehensive DoD policy on prevention and response to sexual assaults according to the guidance in references (b) through (d), and the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) memoranda JTF-SAPR-004; JTF-SAPR-005; JTF-SAPR-006; JTF-SAPR-007; JTF-SAPR-008; the Deputy Secretary of Defense memorandum dated March 16, 2005; JTF-SAPR-009; and the USD(P&R) memoranda JTF-SAPR-010, JTF-SAPR-011, JTF-SAPR-012, JTF-SAPR-013, and JTF-SAPR-014 (references (e) through (o)).

1.2. Supersedes all regulatory and policy guidance within the Department of Defense not expressly mandated by law that are inconsistent with its provisions, or would preclude execution.

2. APPLICABILITY AND SCOPE

This Directive applies to:

2.1. The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components"). The

term "Military Services," as used herein, refers to the Army, the Navy, the Marine Corps, and the Air Force, including their National Guard and Reserve components.

2.2. The National Guard and Reserve members who report they are victims of sexual assault when performing active and inactive duty (as defined in Section 101(d)(3) of title 10, United States Code (reference (t))).

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2 and shall be uniformly applied in implementing DoD instructions and regulations issued by the Secretaries of the Military Departments.

4. POLICY

It is DoD policy to:

4.1. Eliminate sexual assault within the Department of Defense by providing a culture of prevention, education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and well-being of all its members.

4.2. Provide standardized requirements, guidelines, protocols, and instructional materials focused on awareness and prevention at all levels as appropriate.

4.3. Provide an immediate, trained response capability for each report of sexual assault in all locations, including deployed locations, and ensure victims of sexual assault are protected, treated with dignity and respect, and receive timely access to appropriate treatment and services.

4.4. Ensure strong support of effective command awareness and prevention programs, as well as law enforcement and criminal justice procedures that enable persons to be held accountable for their actions, which includes the possibility of prosecution for committing acts of sexual assault.

4.5. Encourage complete, unrestricted reporting of sexual assaults to achieve the objectives in paragraph 4.4. of this Directive.

4.6. Provide a restricted reporting option that allows a Service member who is sexually assaulted to confidentially disclose, in accordance with DoD Directive 5400.11 (reference (q)), the details of his or her assault to specified individuals and receive medical treatment, counseling, and advocacy without automatically triggering the official investigative process. See enclosure 3.

4.7. Prohibit the enlistment or commissioning of personnel in the active duty Armed Forces, National Guard or Reserve components when the person has a qualifying conviction (see paragraph E2.1.8.) for a crime of sexual assault.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Personnel Readiness (USD(P&R)) shall:

5.1.1. Oversee the Sexual Assault Prevention and Response Office (SAPRO). This organization addresses DoD sexual assault policy matters, except criminal investigative policy matters assigned to the DoD Inspector General.

5.1.2. Acquire the quarterly and annual sexual assault prevention and response data from the Military Services and assemble the annual reports involving members of the Armed Forces.

5.1.3. Develop overall policy and provide guidance for the DoD Sexual Assault Prevention and Response (SAPR) Program, except criminal investigative policy matters assigned to the DoD Inspector General.

5.1.4. Monitor compliance with this Directive.

5.1.5. Provide guidance and technical assistance to the Heads of the DoD Components in addressing matters concerning sexual assault prevention and response.

5.1.6. Develop strategic program guidance, joint planning objectives, and identify legislative changes needed to ensure the future availability of resources in support of DoD sexual assault prevention and response policies.

5.1.7. Develop metrics to measure compliance and the effectiveness of sexual assault prevention and response training and awareness objectives. Review and analyze data collected by the Military Services.

5.1.8. Maintain sexual assault data collected from the Military Services in the Defense Incident-Based Reporting System (DIBRS) (see DoD Directive 7730.47, reference (r)). This system meets uniform federal crime reporting and statutory requirements, and serves as a DoD source for internal and external response requests for statistical data on criminal offenses.

5.1.9. Establish reporting categories and monitor specific goals included in the annual sexual assault prevention and response assessments of each Military Service.

5.1.10. Collaborate with Federal and State Agencies that address sexual assault prevention and response issues and serve as liaison to their committees and advisory groups as appropriate.

5.2. The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the USD(P&R), shall recommend the Department's Sexual Assault healthcare policies, clinical practice guidelines, related procedures, and standards governing the Department of Defense healthcare programs for victims of sexual assault.

5.3. The General Counsel of the Department of Defense shall provide advice and assistance on all legal matters, to include the review and coordination on all proposed policies, regulations, directives, instructions, proposed exceptions to policy, and the review of all legislative proposals affecting mission and responsibilities of the SAPRO.

5.4. The Inspector General of the Department of Defense shall:

5.4.1. Develop and/or oversee the promulgation of criminal investigative and law enforcement policy regarding sexual assault and establish guidelines for the collection and preservation of evidence with non-identifying information on the alleged victim, under the restricted reporting process, in coordination with the ASD(HA).

5.4.2. Oversee criminal investigations of sexual assault conducted by the DoD Components and sexual assault training within the DoD law enforcement community.

5.4.3. Collaborate with the SAPRO on sexual assault matters.

5.5. The Secretaries of the Military Departments shall:

5.5.1. Ensure compliance with this Directive and establish policies and procedures to implement this program within their cognizance and consistent with the provisions of this Directive.

5.5.2. Program appropriate resources to enable the Combatant Commands to achieve compliance with the policies set forth in this Directive.

5.5.3. Provide program and obligation data to the Principal Deputy Under Secretary of Defense for Personnel and Readiness, as required.

5.5.4. Establish and codify support to Combatant Commands and Defense Agencies, either as a host activity or in a deployed environment.

5.5.5. Provide annual reports of sexual assaults involving Service members to the SAPRO for consolidation into the annual report to Congress according to reference (a).

5.6. The Chairman of the Joint Chiefs of Staff shall:

5.6.1. Assess SAPR as part of the overall force planning function of any force deployment decision. Periodically, reassess the SAPR posture of deployed forces. Review the Combatant Commanders' joint plans, deployment orders, and other relevant documents for SAPR considerations.

5.6.2. Monitor policy implementation of this Directive and implementing instructions during military operations.

5.7. The Commanders of the Combatant Commands, through the Chairman of the Joint Chiefs of Staff and the Directors of Defense Agencies, under their OSD Principal Staff Assistants who report directly to the Secretary or Deputy Secretary of Defense, shall:

5.7.1. Ensure compliance with this Directive, and establish policies and procedures to implement the SAPR Program within their areas of responsibility. When the Combatant Commanders and Defense Agencies rely on the installation host Service or a component theater commander to provide investigation, legal, medical and counseling support, these relationships should be formally established and published.

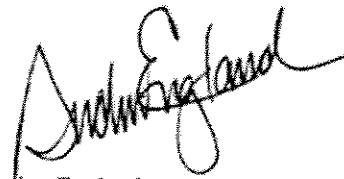
5.7.2. Ensure joint operational plans, development orders, and other relevant documents establish theater-level requirements for prevention and response to incidents of sexual assault that occur during military operations.

6. INFORMATION REQUIREMENTS

The sexual assault reporting requirements in Directive have been assigned Report Control Symbol (RCS) DD-P&R(A) 2205 in accordance with DoD 8910.1-M (reference (s)).

7. EFFECTIVE DATE

This Directive is effective immediately.



Gordon England
Acting Deputy Secretary of Defense

Enclosures - 3

E1. References, continued

E2. Definitions

E3. Confidential Reporting Policy for Victims of Sexual Assault

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Under Secretary of Defense for Personnel and Readiness Memorandum, "Review of Administrative Separation Actions Involving Victims of Sexual Assault (JTF-SAPR-004)," November 22, 2004
- (f) Under Secretary of Defense for Personnel and Readiness Memorandum, "Commander Checklist for Responding to Allegations of Sexual Assault (JTF-SAPR-005)," December 15, 2004
- (g) Under Secretary of Defense for Personnel and Readiness Memorandum, "Department of Defense (DoD) Definition of Sexual Assault (JTF-SAPR-006)," December 13, 2004
- (h) Under Secretary of Defense for Personnel and Readiness Memorandum, "Training Standards for DoD Personnel on Sexual Assault Prevention & Response (JTF-SAPR-007)," December 13, 2004
- (i) Under Secretary of Defense for Personnel and Readiness Memorandum, "Response Capability for Sexual Assault (JTF-SAPR-008)," December 17, 2004
- (j) Deputy Secretary for Defense Memorandum, "Confidentiality Policy for Victims of Sexual Assault (JTF-SAPR-009)," March 16, 2005
- (k) Under Secretary of Defense for Personnel and Readiness Memorandum, "Collaboration with Civilian Authorities for Sexual Assault Victim Support (JTF-SAPR-010)," December 17, 2004
- (l) Under Secretary of Defense for Personnel and Readiness Memorandum, "Training Standards for Sexual Assault Response Training (JTF-SAPR-011)," December 17, 2004
- (m) Under Secretary of Defense for Personnel and Readiness Memorandum, "Training Standards for Pre-Deployment Information on Sexual Assault and Response Training (JTF-SAPR-012)," December 13, 2004
- (n) Under Secretary of Defense for Personnel and Readiness Memorandum, "Essential Training Tasks for a Sexual Assault Response Capability (JTF-SAPR-013)," April 26, 2005
- (o) Under Secretary of Defense for Personnel and Readiness Memorandum, "Sexual Assault Evidence Collection and Preservation Under Restricted Reporting (JTF-SAPR-014)," June 30, 2005
- (p) Section 504 of title 10, United States Code
- (q) DoD Directive 5400.11, "DoD Privacy Program," November 16, 2004
- (r) DoD Directive 7730.47, "Defense Incident-Based Reporting System (DIBRS)," December 1, 2003
- (s) DoD 8910.1-M, DoD Procedures for Management of Information Requirements, June 30, 1998
- (t) Section 101(d)(3) of title 10, United States Code
- (u) DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 2003
- (v) Section 1191c of title 29, United States Code
- (w) Chapter 47 of title 10, United States Code

E2. ENCLOSURE 2

DEFINITIONS

The following definitions apply to the DoD SAPR Program.

E2.1.1. Commander. An officer who occupies a position of command authorized by appointment or by assumption of command.

E2.1.2. Confidential Reporting. For the purposes of the policies and procedures of the SAPR Program, confidential reporting is restricted reporting that allows a Service member to report or disclose to specified officials that he or she has been the victim of a sexual assault. This reporting option gives the member access to medical care, counseling, and victim advocacy, without requiring those specific officials to automatically report the matter to law enforcement or initiate an official investigation. See enclosure E3.

E2.1.3. Covered Communication. Verbal, written, or electronic communications of personally identifiable information concerning a sexual assault victim or alleged assailant provided by the victim to the Sexual Assault Response Coordinator (SARC), Victim Advocate (VA), or healthcare provider related to his or her sexual assault.

E2.1.4. DoD Sexual Assault Prevention and Response (SAPR) Program. A DoD program for the Military Departments and the DoD Components that establishes sexual assault prevention and response policies to be implemented worldwide. The program objective establishes an environment and military community free of sexual assault.

E2.1.5. Healthcare Provider (HCP). For the purpose of this Directive, this term applies to those individuals who are employed or assigned as healthcare professionals, or are credentialed to provide health care services, at a military medical or military dental treatment facility, or who provide such care at a deployed location or in an official capacity. This term also includes military personnel, DoD civilian employees, and DoD contractors who provide health care at an occupational health clinic for DoD civilian employees or DoD contractor personnel.

E2.1.6. Non-Identifying Personal Information. For the purpose of this Directive, this term applies to the victim and alleged assailant of a sexual assault and is that information which would disclose or have a tendency to disclose the person's identity and is personal identifying information. Personal identifying information includes the person's name or other particularly identifying descriptions (e.g. physical characteristics or identity by position, rank, or organization), or other information about the person or the facts and circumstances involved that could reasonably be understood to identify the person (e.g. a female in a particular squadron or barracks when there is only one female assigned). In contrast, non-identifying personal information includes those facts and circumstances surrounding the sexual assault incident or that is about the individual that enables the identity of the individual to remain anonymous.

E2.1.7. Official Investigative Process. The formal process a commander or law enforcement organization uses to gather evidence and examine the facts and circumstances surrounding a report of sexual assault.

E2.1.8. Qualifying Conviction. A State or Federal conviction for a felony crime of sexual assault and any general or special court-martial conviction for a Uniform Code of Military Justice (reference (p)) offense which otherwise meets the elements of a crime of sexual assault, even though not classified as a felony or misdemeanor.

E2.1.9. Restricted Reporting. A process used by a Service member to report or disclose that he or she is the victim of a sexual assault to specified officials on a requested confidential basis. Under these circumstances, the victim's report and any details provided to a healthcare provider, the SARC, or a VA will not be reported to law enforcement to initiate the official investigative process unless the victim consents or an established exception is exercised under this Directive. Additional explanation and guidance is provided in enclosure 3.

E2.1.10. Senior Commander. For the purpose of this Directive, this term refers to an officer, usually in the grade of O-6 or higher, who is the commander of a military installation, base, post or comparable unit, and has been designated by the respective Military Service to oversee the SAPR Program.

E2.1.11. Service Member. An active duty or National Guard or Reserve Service member performing active or inactive service (as defined in Section 101(d)(3) of title 10, United States Code (reference (t))) or a member of the Coast Guard (when the Coast Guard is operating as a Service of the Department of the Navy).

E2.1.12. Sexual Assault. For the purpose of this Directive and SAPR awareness training and education, the term "sexual assault" is defined as intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. It includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. "Consent" shall not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion, or when the victim is asleep, incapacitated, or unconscious.

E2.1.13. Sexual Assault Forensic Examination (SAFE). The medical examination of a sexual assault victim under circumstances and controlled procedures to ensure the physical examination process, and the collection, handling, analysis, testing, and safekeeping of any bodily specimens, meet the requirements necessary for use as evidence in criminal proceedings.

E2.1.14. Sexual Assault Response Coordinator (SARC). Military personnel, DoD civilian employees, or DoD contractors under the senior commander's supervision, who:

E2.1.14.1. Serves as the central point of contact at an installation or within a geographic area to oversee sexual assault awareness, prevention and response training.

E2.1.14.2. Ensures appropriate care is coordinated and provided to victims of sexual assault; and tracking the services provided to a victim of sexual assault from the initial report through final disposition and resolution.

E2.1.15. Unrestricted Reporting. A process a Service member uses to disclose, without requesting confidentiality or restricted reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim's report and any details provided to healthcare providers, the SARC, a VA, command authorities, or other persons are reportable to law enforcement and may be used to initiate the official investigative process. Additional explanation and guidance are provided in enclosure 3.

E2.1.16. Victim. For the purpose of this Directive, a victim is a person who alleges direct physical, emotional, or pecuniary harm as a result of the commission of a sexual assault. The term encompasses all persons eligible to receive treatment in military medical treatment facilities; however the restricted reporting option is only available to those sexual assault victims who are service members as defined in paragraph E2.1.11.

E2.1.17. Victim Advocate (VA). Military personnel, DoD civilian employees, DoD contractors, or volunteers who facilitate care for victims of sexual assault under the SAPR Program, and who, on behalf of the sexual assault victim, provide liaison assistance with other organizations and agencies on victim care matters, and report directly to the SARC when performing victim advocacy duties.

E3. ENCLOSURE 3

CONFIDENTIAL REPORTING PROGRAM FOR VICTIMS OF SEXUAL ASSAULT

E3.1.1. The Department of Defense recognizes the potential impact restricted reporting may have on investigations and the ability of the alleged offender's commander to hold the offender accountable. However, this policy decision represents the judgment that such risks have been carefully considered, but were outweighed by the overall interest in providing sexual assault victims this form of support.

E3.1.2. This enclosure provides the framework for the confidential reporting program and its policies. The SAPRO will coordinate specific implementation details consistent with this policy, in conjunction with the Military Departments. This SAPR Program requires extensive, in-depth training for DoD personnel and specialized training for Commanders, Senior Enlisted Leaders, VA, SARC, investigators, law enforcement, chaplains, HCP, and legal personnel.

E3.1.3. See restricted reporting as defined in enclosure 2.

E3.1.4. The Department of Defense is committed to ensuring victims of sexual assault are protected, treated with dignity and respect, and provided support, advocacy and care. DoD policy also strongly supports effective command awareness and prevention programs, as well as law enforcement and criminal justice procedures that enable persons to be held accountable for their actions, which includes appropriate criminal dispositions for sexual assault. To achieve these dual objectives, DoD policy prefers complete reporting of sexual assaults to activate both victims' services and accountability actions. However, recognizing a mandate of complete reporting may represent a barrier for victims to access services when the victim desires no command or law enforcement involvement, there is a need to provide an option for confidential restricted reporting.

E3.1.5. Assuring privacy and providing a confidential disclosure option for sexual assault victims is critical to discharging the military's commitment to providing care and support for victims of sexual assault. Sexual assault is one of the most under-reported violent crimes in our society and in the military. Although the victim's decision to report is a crucial step following a sexual assault, reporting is often precluded by the victim's desire for no one to know what happened. The Commanders have a responsibility to ensure community safety and due process of law, but they must also recognize the importance of protecting the privacy of victims under their command. Subject matter experts agree that a system which promotes privacy and confidentiality can have a positive impact in bringing victims forward to provide information about being assaulted.

E3.1.6. Recognizing these DoD interests as a matter of DoD policy, Service members who are sexually assaulted will now have the following reporting options:

E3.1.6.1. Unrestricted Reporting. A Service member who is sexually assaulted and desires medical treatment, counseling, and an official investigation of his or her allegation should use existing reporting channels (e.g., chain of command, law enforcement, or report the incident to the SARC). When notified of a reported sexual assault, the SARC will immediately assign a VA. Additionally, at the victim's discretion or request, the healthcare provider shall arrange a SAFE (see paragraph E2.1.13.) to be conducted, which may include the collection of evidence. Details regarding the incident will be limited to only those personnel who have a legitimate need to know.

E3.1.6.2. Restricted Reporting. Restricted reporting allows a sexual assault victim to confidentially disclose the details of his or her assault to specified individuals and receive medical treatment and counseling, without triggering the official investigative process. Service members who are sexually assaulted and desire restricted reporting under this policy may only report the assault to the SARC, VA or a HCP. However, consistent with current policy, they may also report the assault to a chaplain. Although a report to a chaplain is not a restricted report under this policy or the provisions of this Directive, it is a communication that may be protected under the Military Rules of Evidence (MRE) or applicable statutes and regulations. The restricted reporting process does not affect any privilege recognized under the MRE. This Directive and its policy on restricted reporting is in addition to the current protections afforded privileged communications with a chaplain, and does not alter or affect those protections.

E3.1.6.2.1. HCP will initiate the appropriate care and treatment, and report the sexual assault to the SARC instead of reporting the assault to law enforcement or the command. When notified of a reported sexual assault, the SARC will immediately assign a VA. The assigned VA will provide the victim accurate information on the reporting process, including both restricted and unrestricted reporting procedures. Additionally, at the victim's discretion or request, the HCP, if appropriately trained and/or supervised, shall conduct a SAFE, which may include the collection of evidence. If the healthcare provider is not appropriately trained to conduct a SAFE, the HCP shall help arrange for a properly-trained DoD HCP, if available. In the absence of a DoD HCP, the victim will be appropriately referred to a non-DoD HCP for the SAFE. When SAFE is performed at local civilian medical facilities, those facilities are bound by State and local laws, which may require reporting the sexual assault. The victim will acknowledge, in writing, his or her understanding of restricted reporting, the exceptions to, and limitations on, restricted reporting. This acknowledgement will also include the victim's understanding that restricted reporting may limit the ability of the Government to prosecute the assailant and an understanding of the reasons DoD policy favors unrestricted reporting.

E3.1.6.2.2. Restricted reporting is intended to give victims additional time and increased control over the release and management of their personal information, and to empower them to seek relevant information and support to make more informed decisions about participating in the criminal investigation. A victim who receives appropriate care and treatment, and is provided an opportunity to make an informed decision about a criminal investigation, is more likely to develop increased trust that his or her needs are of primary concern to the command and may eventually lead the victim to decide to pursue an official investigation. Even if the victim chooses not to pursue an official investigation, this additional reporting avenue gives the senior commander a clearer picture of the sexual violence within the command, and enhances the senior commander's ability to provide a safe environment and contributes to the well-being and mission-readiness of all of its service members

E3.1.7. In cases where a victim elects restricted reporting, the SARC, assigned VA (whether uniformed or civilian), and HCPs may not disclose covered communications to law enforcement or command authorities, either within or outside the Department of Defense, except as provided in paragraph E3.1.8. For purposes of public safety and command responsibility, the SARC shall report information concerning sexual assault incidents, without information that could reasonably lead to personal identification of the victim or the alleged assailant, to the senior commander (see paragraph E2.1.10.) within 24 hours of the sexual assault report.

E3.1.8. Exceptions to Confidentiality and Restricted Reporting and Limitations on Use. In cases where victims elect restricted reporting, the prohibition on disclosing covered communications to the persons or entities as indicated will be suspended for the reasons as follows:

E3.1.8.1. The Command officials or law enforcement when disclosure is authorized by the victim in writing.

E3.1.8.2. The Command officials or law enforcement when disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person.

E3.1.8.3. The Disability Retirement Boards and officials when disclosure by a HCP is required for fitness for duty for disability retirement determinations, limited to only the information necessary to process disability retirement determination.

E3.1.8.4. The SARC, VA or HCP when disclosure is required for the supervision and/or coordination of direct victim treatment or services.

E3.1.8.5. Military or civilian courts of competent jurisdiction when disclosure is ordered by a military, Federal, or State judge, or other officials or entities as required by a Federal or State statute or applicable U.S. international agreement. The SARC, assigned VA, and healthcare providers will consult with the senior commander's servicing legal office, in the same manner as other recipients of privileged information, to determine if the exception criteria apply

and have a duty to disclose the otherwise protected information. Until those determinations are made, only non-identifying information should be disclosed.

E3.1.8.6. The SARC will evaluate the information provided and determine whether an exception applies. If needed, using non-identifying personal information (see paragraph E2.1.6.), the SARC shall do so in consultation with the staff judge advocate of the senior commander. When there is uncertainty or disagreement on whether an exception applies, the matter shall be brought to the attention of the senior commander for decision.

E3.1.8.7. The SARC, VA and healthcare provider will not disclose covered communications unless the victim authorizes the disclosure in writing or another exception established herein applies when the information about a sexual assault is disclosed to command from a source independent of restricted reporting avenues or to law enforcement from other sources, and an investigation into an allegation of sexual assault is initiated.

E3.1.8.8. The disclosure will be limited to information necessary to satisfy the purpose of the disclosure in the event a disclosure is made under the authority of subparagraphs E3.1.8.1. through E3.1.8.5. Further disclosure will not be made unless the victim authorizes the disclosure in writing.

E3.1.8.9. If a SARC, VA or healthcare provider makes an unauthorized disclosure of a covered communication, the SARC, VA and healthcare provider will not disclose additional covered communications unless the victim authorizes the disclosure in writing or another exception established herein applies. As noted below, the unauthorized disclosure of a covered communication may result in disciplinary action.

E3.1.8.10. If the report contains an allegation of sexual assault and qualifies for restricted reporting, any other offenses revealed by the victim are considered covered communications and will not be disclosed except as authorized according to paragraph E3.1.8.

E3.1.8.11. Because non-identifying personal information under the restricted reporting option is intended to provide the senior commander with general environmental information about the number and types of sexual assaults on the installation, and is to be used to provide a better understanding of incidents of sexual assault, neither the senior commander nor law enforcement officials may initiate investigations based on information provided by SARCs under paragraph E3.1.7. (information for safety and command responsibility purposes without identifiers). The senior commander, however, may use the information to enhance preventive measures, to enhance the education and training of their personnel, and to more closely scrutinize their organization's climate and culture for contributing factors, but may not use the information for investigative purposes or in a manner that is likely to discover, disclose, or reveal the identities being protected.

E3.1.9. Regardless of whether the member elects restricted or unrestricted reporting, confidentiality of medical information will be maintained in accordance with DoD 6025.18-R (reference (u)).

E3.1.10. Healthcare providers may also convey to the victim's unit commander any possible adverse duty impact related to the victim's medical condition and prognosis in accordance with reference (u) and the Health Insurance Portability and Accountability Act (reference (v)). Such circumstances however, do not otherwise warrant an exception to policy, and therefore the covered communication related to the sexual assault may not be disclosed. Improper disclosure of covered communications, improper release of medical information, and other violations of this policy are prohibited and may result in discipline under Chapter 47 of title 10, United States Code (reference (w)) or State statute, loss of privileges, or other adverse personnel or administrative actions.

E3.1.11. When information about a sexual assault comes to any commander's attention from a source independent of the restricted reporting avenues, that commander shall report the matter to law enforcement and an official investigation may be initiated based on that independently-acquired information. Additionally, when the SARC or assigned VA learns that a law enforcement official has initiated an official investigation that is based upon independently-acquired information, and after consulting with the law enforcement official responsible for the investigation, the SARC or assigned VA will notify the victim, as appropriate. A victim will also be notified that disclosure of his or her sexual assault to persons outside the protective sphere of the specified persons covered by this restricted reporting policy may result in the initiation of the official investigative process regarding the allegations that the victim disclosed.

E3.1.12. Restricted reporting does not create any actionable rights for the alleged offender or the victim, nor constitute a grant of immunity for any actionable conduct by the offender or the victim. Covered communications that have been disclosed may be used in disciplinary proceedings against the offender or the victim, even if such communications were improperly disclosed.